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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/023,962	12/18/2001	Jorge Mazza	3162/0K107	6593

7590 04/07/2003

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EXAMINER

EINSMANN, MARGARET V

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 04/07/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

AS-7

<b>Office Action Summary</b>	<b>Applicati n No.</b>	<b>Applicant(s)</b>	
	10/023,962	MAZZA, JORGE	
	<b>Examiner</b>	<b>Art Unit</b>	
	Margaret Einsmann	1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____   |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>6</u> . | 6) <input type="checkbox"/> Other:  |

## DETAILED ACTION

### *Information Disclosure Statement*

The information disclosure statement (IDS) submitted on 7/3/02 is being considered by the examiner. However, it neglected to include the Mazza patents cited in the rejections that follow. Since applicant is also an inventor listed on both of these patents, applicant is surely aware of their existence and how they relate to the patentability of many of the instant claims. Applicant is reminded of his duty to disclose information material to patentability. **37 CFR 1.56 states:**

*(a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is cancelled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct.*

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:  
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "spacer arm" in claim 1 is vague and indefinite. It is necessary that the product be described with sufficient particularity that it can be identified so that one can determine what will and will not infringe. *Benger labs. ltd. v. R.K. Laros Co*, 135 USPQ 111; *In re Bridgeford* (CCPA 1966) 149 USPQ 55; *Locklin et al. v. Switzer Bros., Inc.* 131 USPQ 294.

The term "spacer arm" appears to refer to a linking substituent. Yet, in claim 2 the spacer arm is appended to the end of the colorant. Since claim 1 and its dependent claims are ambiguous, the examiner has rejected said claims over art having either a linking moiety or a dangling substituent.

Claim 2 is indefinite because R is defined twice. R cannot be both an alkylene group and an integer. In claims 4 and 5 it appears that "sterified" should be "esterified."

Claim 6 is not properly dependent on claim 5.

In claim 3 the term "ftalocianine, eventually metallized" is not understood.

In claim 8, W is selected from two identical substituents since R<sub>5</sub> and R<sub>6</sub> are identical.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,2 ,3,4,6,12 16, 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Yamanaka et al., US 4,725,285.

The dye of example 7 In column 6 is an anionic reactive azo dye used to dye cotton having a linking arm  $\text{NH}(\text{CH}_2)_2\text{SO}_3\text{Na}$  wherein  $X = \text{NR}_1$ ,  $R_1 = \text{H}$ , R is a  $\text{C}_2$  straight chain alkylene group and  $Z = \text{SO}_3\text{Na}$ . If the spacer arm is considered  $\text{CH}_2\text{CH}_2\text{SO}_3\text{Na}$ , then the dye reads on claim 4. The dye at the top of column 5 has a spacer arm  $\text{NHCH}_2\text{CH}_2\text{NH}$  which meets the limitation of claim 6.

Claims 1,2, 9,10,12,14,16,6 are rejected under 35 U.S.C. 102(b) as being anticipated by Van Chambers et al. The reactive group beta-sulfatoethyl sulfonyl reads on applicant's claimed spacer arm as defined in claim 1. Note the dyes in column 25 and 26. The first three all have two of said groups. Said dyes are used to dye polyester-cotton blend materials. See abstract.

Claims 1-6, 9,10,16,17,20 are rejected under 35 U.S.C. 102(b) as being anticipated by Mazza et al., US 5,597,485 and/or its continuation US 5,876,597. The citations below are from '485. Int(V) at the bottom of columns 13 and 14 is an anionic colorant having the spacer arm  $\text{NH}(\text{CH}_2)_6\text{NH}_2$ . Applicant may argue that said dye is an intermediate. Note column 15 lines 53 to col 16 line 18 where said dye is isolated and dried. Accordingly applicant teaches how to make and collect said dye. Regarding the process claims, the composition comprising the dye is used to form a colored monomer, said monomer being the dyed substrate. See F in column 16. Example 6 in column 19

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describes the formation of a colored polymer, said polymer being the colored substrate.

Claims 1-4, 6 rejected under 35 U.S.C. 102(b) as being anticipated by Atkinson et al, US 4,431,544. Column 14 describes the addition of 1,6 diaminohexane to Procion green H4G an anionic reactive dye forming an anionic colorant with a spacer arm. Noting the description of the linking group from col 3 lines 50 to col 4 line 41, the spacer arm is attached to the triazinyl group of the reactive dye; said spacer including Y which is a nucleophilic group -NH-, -O- or -S- as claimed., R which may be -CH<sub>2</sub>)<sub>n</sub> as claimed and X which may be amino, carboxyl or other polar groups as claimed.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 12-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mazza or Atkinson in view of Cockett et al., US 5,846,430 and Akahori et al., US 5,463,032. Mazza and Atkinson are applied as in the above rejections as disclosing fiber reactive dyes which have been modified by the addition of a spacer arm. Cockett discloses that fiber reactive dyes are used in the textile, paper and leather industries. See col 1 lines 14-16. Example 1 is a composition comprising several fiber reactive and other anionic dyes. Akahori et al disclose the variety of substrates which are conventionally dyed with reactive dyes as well as conventional reactive dyes which may

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be mixed with the dyes of their invention see col 11 lines 10-30 for the list of reactive dyes including the dye Procion dye used by Atkinson and column for the list of substrates dyeable with reactive dyes. It would have been obvious to the skilled artisan to dye the substrates claimed with the dyes disclosed by Mazza or Atkinson with the expectation of successful dyeing because the addition of the spacer arm did not interfere with the chromophoric portion of said dyes, and said reactive dyes have known utility in the dyeing of the claimed substrates as disclosed by the two secondary references.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Margaret Einsmann whose telephone number is 703-308-3826. The examiner can normally be reached on 7:00 AM -4:30 PM M-Th and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on 703-308-4708. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

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Margaret Einsmann  
Primary Examiner  
Art Unit 1751

April 3, 2003